

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF CONNECTICUT**

RICHARD F. MASSARO,	:	
Plaintiff,	:	
	:	
-vs-	:	Civil No. 3:02cv537 (PCD)
	:	
ALLINGTOWN FIRE DISTRICT, <i>et al.</i> ,	:	
Defendants.	:	

**RULING ON MOTION TO COMPEL AND REQUEST FOR SANCTIONS**

Plaintiff moves to compel the attendance of defendant John Samperi at his deposition and for sanctions for Samperi's failure to attend two properly noticed depositions. The motion to compel attendance is **granted** and the motion for sanctions is **granted in part**.

**I. BACKGROUND**

On October 18, 2002, plaintiff notified defendant Samperi of a deposition scheduled for December 11, 2002. The deposition was cancelled. On December 17, 2002, Samperi was notified of a second deposition scheduled for February 7, 2003. The deposition was rescheduled to February 10, 2003, by notice dated January 23, 2003, which deposition was also cancelled. On February 20, 2003, Samperi was notified of a deposition scheduled for March 27, 2003. The deposition was cancelled a third time, at which time it was rescheduled to April 1, 2003. On April 1, 2003, neither Samperi nor his counsel appeared at the deposition. The deposition was scheduled for May 7, 2003, and was later rescheduled to May 8, 2003. On May 8, 2003, plaintiff was notified one hour prior to the scheduled deposition time that Samperi would not be attending.

## II. ANALYSIS

Neither party disputes that Samperi twice failed to appear at a scheduled deposition, nor that he is required to attend a properly noticed deposition. As such, the motion to compel attendance is granted. Defendant argues only that the motion should be denied for failure to provide an affidavit certifying that “counsel making the motion has conferred with opposing counsel . . . in a good faith effort to eliminate or reduce the area of controversy,” D. CONN. L. CIV. R. 37(a)(2), and that the number of hours claimed in attorneys’ fees as a sanction for failure to attend the two depositions is unreasonable.

As plaintiff attaches an affidavit to his reply brief certifying his good faith efforts to resolve the present dispute,<sup>1</sup> his technical failure does not constitute a basis for denying the motion.

There is no dispute as to the fact that Samperi, a party-deponent, twice failed to attend his deposition. There is further no dispute that his failure to attend renders him subject to sanctions pursuant to FED. R. CIV. P. 37(d). The parties only differ as to the number of hours reasonably expended by plaintiff in preparing for the deposition.

In support of his claim for attorneys’ fees, plaintiff provides a one-page summary alleging, for April 1, 2003, 14 hours of attorneys’ fees at \$240 per hour and 7 hours of associates attorneys’ fees at \$200 per hour “for research and assistance,” and for May 8, 2003, 10 hours of attorneys’ fees at \$240 per hour and 5 hours of associates attorneys’ fees at \$200 per hour “for research and assistance.” No time sheets are included in the request for attorneys’ fees. It scarcely need be said that “any attorney who hopes to obtain an allowance from the court should keep accurate and current records of work

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<sup>1</sup> Plaintiff attached the affidavit to his reply brief. The affidavit is dated June 21, 2003. The original motion is dated June 24, 2003.

done and time spent.” *In re Hudson & Manhattan Railroad Co.*, 339 F.2d 114, 115 (2d Cir. 1964). Plaintiff does not even go so far as to identify the individual attorneys involved in the claim for fees, let alone “produce satisfactory evidence—in addition to the attorney’s own affidavits—that the requested rates are in line with those prevailing in the community for similar lawyer’s of reasonably comparable skill, experience, and reputation.” *Blum v. Stenson*, 465 U.S. 886, 895-96 n.11, 104 S. Ct. 1541, 79 L. Ed. 2d 891 (1984). In effect, plaintiff requests that this Court, absent any evidence substantiating either entitlement to the hourly fee or the necessity for the hours spent, award in excess of \$8,000 in fees.

Absent such evidence, plaintiff shall receive attorneys’ fees for 10 hours of preparation for the two depositions, a reasonable preparation time absent any detail whatsoever. This Court will not simply award thirty-six hours of attorneys’ fees for deposition preparation absent any time records indicating in reasonable detail the tasks performed and why such time was necessary. As plaintiff has not provided affidavits indicating a higher rate is appropriate, the rate will be set at that typically awarded, \$150 per hour, for a total award of \$1,500.

As the matter of Samperi’s deposition has gone unresolved for more than seven months, due to the failure of both defendant Samperi to attend properly noticed depositions and of plaintiff to alert this Court to the issue through motion when defendant first failed to attend his deposition some five months ago, Samperi’s deposition will therefore be scheduled for a date prior to August 22, 2003, absent either (1) a joint request for an extension detailing why such deposition may not reasonably be scheduled prior to that date or (2) a stipulation filed with this Court indicating that the deposition is no longer required. Counsel for defendant shall take all necessary steps to acquaint Mr. Samperi with his

legal obligation to attend such deposition and the potential sanctions, up to and including a finding of default on the claims against him, if he requires this Court to revisit the issue.

### III. CONCLUSION

Plaintiff's motion to compel attendance at a deposition (Doc. No. 44-1) is **granted**. The deposition of defendant Samperi shall take place prior to August 22, 2003 as consistent with the foregoing ruling. Plaintiff's request for sanctions (Doc. No. 44-2) is **granted in part**. Plaintiff is hereby awarded \$1,500 in attorneys' fees for defendant Samperi's failure to attend his depositions.

SO ORDERED.

Dated at New Haven, Connecticut, August \_\_\_\_, 2003.

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Peter C. Dorsey  
United States District Judge